

CERTAIN TYPES OF EXPERTISE IN CRIMINAL CASES OF A TERRORIST NATURE

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ABSTRACT

The article analyzes the theoretical and criminal procedural features of certain types of expertise performance in expert institutions concerning the cases of terrorist crimes. It was noted, that the appointment and the production of a forensic expertise is carried out by an investigator, when it becomes necessary to establish causes of death; The nature and the extent of harm caused to health; A suspect's or an accused one mental state, when there is doubt in his sanity. The author's position was expressed regarding the possibility and the necessity of psychophysiological expertise use by an investigator, including the application of a polygraph.

The necessity of differentiation between the powers of an expert and a specialist in the performance of an expertise, a timely appointment of studies, forensic examinations, a personal presence during a forensic autopsy of a corpse, and also during the performance of psycho-physiological expertise was substantiated. Specific measures are proposed aimed at the production efficiency increase of various kinds of examinations. The results of practical worker interviews are presented: investigators, prosecutors and judges, who spoke in support of made proposals concerning the possibility of a polygraph use during a preliminary investigation, as well as in a criminal proceedings related to crimes of a terrorist nature.

Thus, the studies carried out in the articles make it possible to state that the practice of interaction between an expert and expert investigator aimed at the effectiveness of a criminal prosecution improvement in cases of terrorist crimes is not only possible but necessary.

Keywords: investigator, examination, expert, specialist, proving, terrorist crime, polygraph.

INTRODUCTION

An operational situation, both at international and at Russian level, continues to be complicated. It is not possible yet to minimize the level of terrorist crime performance, and there is a growth trend. In these conditions, it is of fundamental importance to observe the principle of a punishment inevitability. The actions of terrorists who committed the crimes of a terrorist nature under no circumstances can be justified by the considerations of political, ideological, religious or any other nature. The persons guilty of committing terrorist crimes must be held accountable according to the full severity of law.

In this regard, the study of problematic aspects concerning the criminal prosecution of terrorist crimes becomes an extremely relevant in modern Russian criminal procedure science.

The proposals made in the article can be introduced into the practice of judicial, psycho-physiological and other expertise. Undoubtedly, this will improve the quality of a preliminary investigation and a trial, the compliance with the requirements of the criminal procedural law will facilitate an effective prosecution at all stages of criminal proceedings.

MATERIALS AND METHODS

The material for the work was the study of a sufficiently large number of criminal cases, examined by various sections and the instances of general jurisdiction courts in 2012-2016, touching upon the problematic aspects of certain types of examination production. Besides, during the writing of this article, we used the data from the author's interviewing of officials who participated in the preliminary investigation and trial stages concerning the cases of terrorist crimes, as well as the production of certain types of expert examinations at the expert institutions dealing with terrorist crimes.

The reliability of the obtained results was evaluated using a general scientific method of cognition, a specific sociological, statistical method, the method of analysis and synthesis, and other methods were used. For example, a specific sociological method was used to collect, analyze and process the legal information of official documents, the materials of law enforcement practice, the materials of questioning, survey and interviewing. So, there is a discussion among the processologists about the use of a polygraph based on the study of the psycho-physiological state of a suspect (an accused one). The results of practical worker interviewing testify to the correctness of the position we occupied, the respondents expressed the support for the use of a polygraph in a conflict-free situation for the performance of a psycho-physiological expertise.

The statistical method was used to quantify the state of a criminal prosecution for terrorist crimes.

RESULTS AND DISCUSSION

Both domestic [1-6] and foreign researchers [7-14] covered rather widely the materials devoted to the criminal prosecution of terrorist crimes in legal literature. Nevertheless, this topic continues to be relevant. The choice of the designated research topic was influenced by the fact that most of the research from Russian and foreign authors devoted to terrorism has a criminal legal nature, whereas there are much less scientific works devoted to criminal procedure.

One of the evidences, determined by the Russian Criminal Procedure Law (RF CPL) aimed at the revealing of a guilt (an innocence) of a person in a terrorist crime commission, is the expert's conclusion and testimony (Article 74 of the Russian Federation Criminal Procedure Code). The evidence base necessary for a correct decision of a case by the first-instance court is developed mainly during a preliminary investigation. And its effectiveness determines the effectiveness of justice to a large extent. That is why, during the preliminary investigation of terrorism cases, the subjects of criminal jurisdiction have to solve a number of specific tasks: 1) investigative actions should be directed to the collection, verification and evaluation of evidence to solve a crime; 2) to formulate and justify a charge under a specific article of the Russian Federation Criminal Code on the basis of the case facts; 3) to create the necessary prerequisites to bring the guilty person who committed a terrorist crime to criminal liability; 4) to obtain compensation for damage caused by a crime; 5) to identify the conditions that contributed to the commission of a crime.

To solve these tasks successfully, the investigator's efforts at the preliminary investigation stage should be directed, first of all, to the disclosure of a crime, without which it is impossible to solve other tasks. Within the investigation concerning the commission of a terrorist crime an investigator can assign various types of examinations depending on a crime specifics. The order No. 2 "On the organization of a preliminary investigation in the Russian Federation Investigative Committee" issued on January 15, 2011 [15], the investigators were instructed to appoint studies, forensic examinations, providing professionals, the experts of the necessary investigative materials, to attend personally during a forensic autopsy of a corpse.

How should they separate the competence of a specialist and an expert during the production of a forensic expertise? There is no single approach to this issue, both among theorists and practitioners.

Thus, A.V. Pisarev and I.P. Pilyushina believe that in case of need for a study, an examination should be appointed, involving an expert, when there is no need for research, it is sufficient to answer the questions posed, and an expert is involved [16].

A.V. Kudryavtseva sets out a broader interpretation in this regard. In her opinion, the activity of an expert differs from the activity of a specialist by the depth of research [17].

On this issue, the Plenum of Russian Federation Supreme Court, pointed out that it is impossible for a specialist to produce an expert examination, since he is empowered only to make judgments on the questions put to him according to the Resolution No. 28 "On Judicial Expertise in Criminal Cases" issued on December 21, 2010 [18]. Hence, we can conclude that the conclusion of a specialist can not replace a full-fledged forensic examination in any way. Nevertheless, the importance of a specialist's activity in criminal proceedings concerning the cases of terrorist crimes, should not be denied. This is evidenced by the materials of judicial practice.

Thus, the verdict of the Kaliningrad Regional Court issued on July 12, 2012 regarding Nasonov A.A. convicted under part 1, Art. 205 of RF Criminal Code states that the expert D. and the specialist Ch. have the necessary qualifications and are competent in the questions posed to them [19].

In some cases, the defense may have doubts about the competence of an expert and about the availability of an appropriate attestation. Judicial examination is carried out on the basis of an investigator's resolution, in which it is necessary to record a surname, a first name and a patronymic of an expert in the case of some information specification in a resolution, and the availability of an appropriate appraisal from an investigator is not required according to Part 1, Art. 195 of CPC RF.

Nevertheless, the Russian Federation Constitutional Court in Decree [20] issued on 18 February 2000 and in Definition N 429-O [21] issued on 18.12.2003 indicated, at the request of a party, that an investigator is obliged to enforce the right to acquaintance with the document evidencing the availability of an expert proper qualification.

The scientific environment discusses widely the possibilities for the application of a psycho-physiological expertise by an investigator, including the use of a polygraph [22], the results of which are drawn up in the form of a forensic report or a specialist conclusion.

A polygraph makes it possible to determine whether a person tells a lie or a truth by measuring the physiological processes in a human body during his interrogation, the polygraph records these physiological changes. The conducted researches show, that quite a positive experience of psychophysiological examinations was accumulated in modern Russia [23].

The current criminal procedural legislation provides for the right of an investigator direct participation during the production of psycho-physiological expertise [24]. It is conducted on his initiative (Article 197 of RF Criminal Procedure Code), a defender is present only with the permission of an investigator (Article 198 of RF Criminal Procedure Code).

Our studies show that in a conflict-free situation the possibility of a polygraph use during a criminal case investigation related to terrorist crimes of a is supported by 83.85% of prosecutors, 47.86% of investigators, 35.40% of judges. Moreover, 64.60% of prosecutors, 35.04% of investigators, 24.78% of judges favored a polygraph use during a trial.

The result of terrorist crime commission is not only the destruction of buildings, structures, various structures, but also large human casualties. The attack at the Domodedovo airport may be used as an example. The terrorist act killed 37 people and 130 had injuries of varying severity [25]. It becomes necessary in such cases to inspect the corpses and their fragments at the site of a terrorist act, which

are extracted from the destroyed objects and are moved to specially designated locations for an initial inspection. The inspection of a corpse is carried out by an investigator with the compulsory participation of a forensic expert, who sorts the fragments of corpses, then packages them separately [26].

CONCLUSIONS

Investigative actions, including the production of certain types of examinations, must be carried out strictly within the law. For this purpose, taking into account the specific nature of terrorist crimes, highly qualified and competent investigators who have extensive experience in investigative practice should make the choice and appointment of examinations. They possess general legal knowledge necessary for the production of investigative actions, they possess the knowledge of new trends in the development of modern natural, technical and other sciences, clearly aware of expert research perfect method use in the system of state expert institutions.

SUMMARY

The statistical data testify to the existence of problems in the detection of terrorist crimes in conditions of initiated criminal cases noticeable increase.

The clearance rate was the following one: in 2010 - 410 (70.5%); in 2011 - 428 (68.8%), in 2012 - 478 (75.0%), in 2013 - 454 (69.0%), in 2014 - 579 (51.4%), in 2015 - 575 (37.4%) of criminal cases.

The evidence base necessary for the disclosure of a crime is formed in the course of investigative actions, also on the basis of an expert conclusion and testimony, engaged in the production of certain types of examinations.

Within the framework of an investigation concerning the fact a terrorist crime commission an investigator can assign various kinds of examinations depending on a crime specifics: forensic medicine; forensic psychiatric; fingerprint; ballistic; explosion engineering, etc.

The studies carried out by us show that an investigator, during the production of a psycho-physiological expertise, can use a polygraph during an interrogation only with a voluntary consent of an interrogated, with the assistance of a psychologist (a polygraph examiner). In the cases when victims and witnesses can receive significant bodily injuries after a terrorist attack there are cases of amnesia when people are unable to recall and reproduce information about the circumstances of a terrorist attack that they know due to the failures of their memory. There are recommendations to stimulate it by the help of a psychologist within the psycho-physiological expertise to help victims and witnesses restore the picture of an incident in details.

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